approved the rule. *Simmons* v. *Western Union Tel. Co.* (1901), 63 S. C. 425; *Graham* v. *Same* (1903), 109 La. 1069, 34 S. Rep. 91; *Wadsworth* v. *Same* (1888), 86 Tenn. 695, 8 S. W. Rep. 574, 6 Am. St. Rep. 864; *Western Union Tel. Co.* v. *Henderson* (1889), 89 Ala. 510; *Chapman* v. *Western Union Tel. Co.* (1890), 90 Ky. 265; *Young* v. *Same* (1890), 107 N. C. 370; *Mentzer* v. *Same* (1895), 93 Ia. 752; *Barnes* v. *Same* (1904), 27 Nev. 438, 76 Pac. Rep. 931; *Davis et al.* v. *Tacoma Railway and Power Co. et al.* (1904), 35 Wash. 203. Sixteen states, however, and the federal courts, excepting one that sits in Texas, deny recovery of damages for mere mental suffering. *Russell v. Western Union Tel. Co.* (1884), 3 Dak. 315; *West v. Same* (1888), 39 Kan. 93; *Chase* v. *Same* (1890), 44 Fed Rep. 554; *Western Union Tel. Co.* v. *Rogers* (1891), 68 Miss. 748; *Chapman* v. *Western Union Tel. Co.* (1892), 88 Ga. 763; *Telegraph Co.* v. *Saunders* (1893), 32 Fla. 434; *Newman* v. *Western Union Tel Co.* (1893), 54 Mo. App. 434; *Summerfield* v. *Same* (1894), 87 Wis. 1; *Butner* v. *Same* (1894), 2 Okla. 234; *Francis* v. *Same* (1894), 58 Minn. 252; *Morton* v. *Same* (1895), 53 Ohio St. 431; *Western Union Tel. Co.* v. *Haltom,* (1897), 71 Ill. App. 63; *Curtin* v. *Western Union Tel. Co.* (1897), 13 N. Y. App. Div. 253; *Peay* v. *Same* (1898), 64 Ark. 538; *Davis* v. *Same* (1899), 46 W. Va. 48; *Western Union Tel. Co.* v. *Ferguson* (1901), 157 Ind. 64, overruling *Reese* v. *Tel Co.* (1889), 123 Ind. 294; *Connelly* v. *Western Union Tel. Co.* (1902), 100 Va. 51. Twelve of these decisions have been rendered since 1893, while only two states, since that year, have adopted the Texas rule as common law. The trend of decisions then seems obviously against that rule, although the opinions supporting it are better reasoned. SUTHERLAND, DAMAGES (3rd Ed.) § 980; 29 AM. LAW REV. 209, note 266. The case under review helps to remove an objection that has often been interposed to the Texas rule, that it is not consistently applied by its adherents. 1 MICH. LAW REV. 525. The dissenting opinion in this case relied on *Sparkman* v. *Western Union Tel. Co.,* 130 N. C. 447, 41 S. E. Rep. 881, which at least suggested that there could be no substantial recovery for a culpable failure to deliver a telegram which was meant merely to relieve mental anguish then already existing. Texas had also held that a continuation of mental anguish could not be measured; it was speculative as compared with mental suffering originally caused by failure to deliver a telegram. *Rowell* v. *Western Union Tel. Co.,* 75 Tex. 26, 12 S. W. Rep. 534; *Johnson* v. *Same,* 14 Tex. Civ. App. 536, 38 S. W. Rep. 64. This is more than a restriction on the original doctrine; it is a contradiction of it. SUTHERLAND, DAMAGES (3rd Ed.) § 975. For damages have been given again and again by the Texas courts for the negligent failure of a telegraph company to relieve mental anxiety about the serious illness or the death of a relative. *Western Union Tel. Co.* v. *Cavin,* 30 Tex. Civ. App. 152, 70 S. W. Rep. 229. And in *Same* v. *Womack,* 9 Tex. Civ. App. 607, damages were recovered by a father for the suffering he underwent and which had gone unrelieved by a telegram that would have informed him of his son's whereabouts; facts similar to those in the present case. For North Carolina then, the present case restores the Texas rule in its full extent.

TENANTS IN COMMON—OUSTER.—In 1818, one Thayer died intestate, seised of certain real estate here in dispute, leaving a widow and three daughters,

one of whom, Mary by name, is the great grandmother of the petitioner and through whom she claims. Mary was the owner of one undivided third subject to her mother's right of dower. In 1826 the husband of one of the daughters, and a third person, purchased the interest of the widow and the second daughter, receiving deeds therefor. These grantees, in 1829, conveyed the whole of the property by warranty deed, containing the usual covenants and the wife joined in relinquishment of her right and claims. This deed, acknowledged by all three, was not recorded until August 22, 1902. Samuel Dyer, the father of defendant, and from whom he claims, entered into possession under this deed in 1835, and from that time until the present, the possession of father and son, respectively, has been open, peaceable, continuous and exclusive. On June 2, 1886, Mary, then 86 years of age and a widow, conveyed by quit-claim deed to her son, petitioner's grandfather, "All right and title which I hold in said property." *Held,* that the possession of the Dyers was such as to constitute an ouster and Mary's right was barred. *Joyce* v. *Dyer et al.* (1905), — Mass. —, 75 N. E. Rep. 81.

While the conveyance to Samuel Dyer purported to convey the entire property, it did not convey the interest of Mary, and therefore Samuel Dyer became a tenant in common with her. The general rule is that the possession of one tenant in common although exclusive, does not amount to a disseisin of the co-tenant, for his possession is to be taken as the possession of the co-tenant, and not adverse, and therefore the co-tenant will not be barred by lapse of time. *Alexander* v. *Kennedy,* 19 Tex. 488, 70 Am. Dec. 358; *Hogg* v. *Beerman,* 41 Ohio St. 81, 52 Am. Rep. 71; *Colman et al.* v. *Clements et al.,* 23 Cal. 245. However, there may be an ouster of one tenant in common by the other and the possession thereafter becomes adverse, and if continued for a sufficient length of time, the right of the co-tenant out of possession may become barred. *Rickard* v. *Rickard,* 13 Pick. 251, 253; *Doe* v. *McCreary,* 2 Ind. 405; *Bellis* v. *Bellis,* 122 Mass. 414, 415. All the evidence in this case pointed to an actual ouster and indicated that the possession was not only exclusive but adverse. Dyer did not enter as a tenant in common but claimed the whole under the conveyance. Mary must be presumed to have had notice that the possession was adverse; for while the deed had not been recorded, she lived in intimacy with the Dyers and made no objections whatever to their acts of exclusive possession. At the time she attempted to convey her interest to her son by statute the deed was required to be delivered on the premises. Therefore, as the grantor was then disseised, the deed was of no effect even if she had an interest to convey. *Sohier et al.* v. *Coffin et al.,* 101 Mass. 179.

WILLS—ATTESTATION—MEANING OF "IN THE PRESENCE OF."—Where, after testator had signed his will in the presence of the attesting witnesses, they took it into another room and there signed it, being out of testator's sight at the time, and then returned to his room and read the will to him, showing him their signatures, with which he expressed satisfaction. *Held,* that the attestation was not "in the presence of" the testator. *Calkins* v. *Calkins* (1905), —Ill. —, 75 N. E. Rep. 182.

The decision is in line with the older cases holding that the words